

**ASSEMBLY BILL**

**No. 2961**

**Introduced by Assembly Member Wayne**

February 25, 2002

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An act to amend Section 437c of the Code of Civil Procedure, relating to summary judgment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2961, as introduced, Wayne. Summary judgment.

Under existing law, a party may move for summary adjudication in any action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding.

This bill would create an exception to that rule by authorizing a motion for summary adjudication of a legal issue or a claim of damages other than punitive damages that does not completely dispose of a cause of action, an affirmative defense, or an issue of duty, if brought upon stipulation of the parties whose claims or defenses are put at issue by the motion, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 437c of the Code of Civil Procedure is  
2 amended to read:  
3 437c. (a) Any party may move for summary judgment in any  
4 action or proceeding if it is contended that the action has no merit  
5 or that there is no defense to the action or proceeding. The motion  
6 may be made at any time after 60 days have elapsed since the

1 general appearance in the action or proceeding of each party  
2 against whom the motion is directed or at any earlier time after the  
3 general appearance that the court, with or without notice and upon  
4 good cause shown, may direct. Notice of the motion and  
5 supporting papers shall be served on all other parties to the action  
6 at least 28 days before the time appointed for hearing. However,  
7 if the notice is served by mail, the required 28-day period of notice  
8 shall be increased by five days if the place of address is within the  
9 State of California, 10 days if the place of address is outside the  
10 State of California but within the United States, and 20 days if the  
11 place of address is outside the United States, and if the notice is  
12 served by facsimile transmission, Express Mail, or another method  
13 of delivery providing for overnight delivery, the required 28-day  
14 period of notice shall be increased by two court days. The motion  
15 shall be heard no later than 30 days before the date of trial, unless  
16 the court for good cause orders otherwise. The filing of the motion  
17 shall not extend the time within which a party must otherwise file  
18 a responsive pleading.

19 (b) The motion shall be supported by affidavits, declarations,  
20 admissions, answers to interrogatories, depositions, and matters of  
21 which judicial notice shall or may be taken. The supporting papers  
22 shall include a separate statement setting forth plainly and  
23 concisely all material facts which the moving party contends are  
24 undisputed. Each of the material facts stated shall be followed by  
25 a reference to the supporting evidence. The failure to comply with  
26 this requirement of a separate statement may in the court's  
27 discretion constitute a sufficient ground for denial of the motion.

28 Any opposition to the motion shall be served and filed not less  
29 than 14 days preceding the noticed or continued date of hearing,  
30 unless the court for good cause orders otherwise. The opposition,  
31 where appropriate, shall consist of affidavits, declarations,  
32 admissions, answers to interrogatories, depositions, and matters of  
33 which judicial notice shall or may be taken.

34 The opposition papers shall include a separate statement which  
35 responds to each of the material facts contended by the moving  
36 party to be undisputed, indicating whether the opposing party  
37 agrees or disagrees that those facts are undisputed. The statement  
38 also shall set forth plainly and concisely any other material facts  
39 which the opposing party contends are disputed. Each material fact  
40 contended by the opposing party to be disputed shall be followed



1 by a reference to the supporting evidence. Failure to comply with  
2 this requirement of a separate statement may constitute a sufficient  
3 ground, in the court's discretion, for granting the motion.

4 Any reply to the opposition shall be served and filed by the  
5 moving party not less than five days preceding the noticed or  
6 continued date of hearing, unless the court for good cause orders  
7 otherwise.

8 Evidentiary objections not made at the hearing shall be deemed  
9 waived.

10 Sections 1005 and 1013, extending the time within which a right  
11 may be exercised or an act may be done, do not apply to this  
12 section.

13 Any incorporation by reference of matter in the court's file shall  
14 set forth with specificity the exact matter to which reference is  
15 being made and shall not incorporate the entire file.

16 (c) The motion for summary judgment shall be granted if all the  
17 papers submitted show that there is no triable issue as to any  
18 material fact and that the moving party is entitled to a judgment as  
19 a matter of law. In determining whether the papers show that there  
20 is no triable issue as to any material fact the court shall consider  
21 all of the evidence set forth in the papers, except that to which  
22 objections have been made and sustained by the court, and all  
23 inferences reasonably deducible from the evidence, except  
24 summary judgment shall not be granted by the court based on  
25 inferences reasonably deducible from the evidence, if contradicted  
26 by other inferences or evidence, which raise a triable issue as to any  
27 material fact.

28 (d) Supporting and opposing affidavits or declarations shall be  
29 made by any person on personal knowledge, shall set forth  
30 admissible evidence, and shall show affirmatively that the affiant  
31 is competent to testify to the matters stated in the affidavits or  
32 declarations. Any objections based on the failure to comply with  
33 the requirements of this subdivision shall be made at the hearing  
34 or shall be deemed waived.

35 (e) If a party is otherwise entitled to a summary judgment  
36 pursuant to this section, summary judgment shall not be denied on  
37 grounds of credibility or for want of cross-examination of  
38 witnesses furnishing affidavits or declarations in support of the  
39 summary judgment, except that summary judgment may be denied  
40 in the discretion of the court, where the only proof of a material fact

1 offered in support of the summary judgment is an affidavit or  
2 declaration made by an individual who was the sole witness to that  
3 fact; or where a material fact is an individual's state of mind, or  
4 lack thereof, and that fact is sought to be established solely by the  
5 individual's affirmation thereof.

6 (f) (1) A party may move for summary adjudication as to one  
7 or more causes of action within an action, one or more affirmative  
8 defenses, one or more claims for damages, or one or more issues  
9 of duty, if that party contends that the cause of action has no merit  
10 or that there is no affirmative defense thereto, or that there is no  
11 merit to an affirmative defense as to any cause of action, or both,  
12 or that there is no merit to a claim for damages, as specified in  
13 Section 3294 of the Civil Code, or that one or more defendants  
14 either owed or did not owe a duty to the plaintiff or plaintiffs. A  
15 motion for summary adjudication shall be granted only if it  
16 completely disposes of a cause of action, an affirmative defense,  
17 a claim for damages, or an issue of duty.

18 (2) A motion for summary adjudication may be made by itself  
19 or as an alternative to a motion for summary judgment and shall  
20 proceed in all procedural respects as a motion for summary  
21 judgment. However, a party may not move for summary judgment  
22 based on issues asserted in a prior motion for summary  
23 adjudication and denied by the court, unless that party establishes  
24 to the satisfaction of the court, newly discovered facts or  
25 circumstances or a change of law supporting the issues reasserted  
26 in the summary judgment motion.

27 (g) Upon the denial of a motion for summary judgment, on the  
28 ground that there is a triable issue as to one or more material facts,  
29 the court shall, by written or oral order, specify one or more  
30 material facts raised by the motion as to which the court has  
31 determined there exists a triable controversy. This determination  
32 shall specifically refer to the evidence proffered in support of and  
33 in opposition to the motion which indicates that a triable  
34 controversy exists. Upon the grant of a motion for summary  
35 judgment, on the ground that there is no triable issue of material  
36 fact, the court shall, by written or oral order, specify the reasons  
37 for its determination. The order shall specifically refer to the  
38 evidence proffered in support of, and if applicable in opposition to,  
39 the motion which indicates that no triable issue exists. The court



1 shall also state its reasons for any other determination. The court  
2 shall record its determination by court reporter or written order.

3 (h) If it appears from the affidavits submitted in opposition to  
4 a motion for summary judgment or summary adjudication or both  
5 that facts essential to justify opposition may exist but cannot, for  
6 reasons stated, then be presented, the court shall deny the motion,  
7 or order a continuance to permit affidavits to be obtained or  
8 discovery to be had or may make any other order as may be just.

9 (i) If the court determines at any time that any of the affidavits  
10 are presented in bad faith or solely for purposes of delay, the court  
11 shall order the party presenting the affidavits to pay the other party  
12 the amount of the reasonable expenses which the filing of the  
13 affidavits caused the other party to incur. Sanctions shall not be  
14 imposed pursuant to this subdivision except on notice contained in  
15 a party's papers, or on the court's own noticed motion, and after  
16 an opportunity to be heard.

17 (j) Except where a separate judgment may properly be awarded  
18 in the action, no final judgment shall be entered on a motion for  
19 summary judgment prior to the termination of the action, but the  
20 final judgment shall, in addition to any matters determined in the  
21 action, award judgment as established by the summary proceeding  
22 herein provided for.

23 (k) In actions which arise out of an injury to the person or to  
24 property, when a motion for summary judgment was granted on  
25 the basis that the defendant was without fault, no other defendant  
26 during trial, over plaintiff's objection, may attempt to attribute  
27 fault to or comment on the absence or involvement of the  
28 defendant who was granted the motion.

29 (l) A summary judgment entered under this section is an  
30 appealable judgment as in other cases. Upon entry of any order  
31 pursuant to this section except the entry of summary judgment, a  
32 party may, within 20 days after service upon him or her of a written  
33 notice of entry of the order, petition an appropriate reviewing court  
34 for a peremptory writ. If the notice is served by mail, the initial  
35 period within which to file the petition shall be increased by five  
36 days if the place of address is within the State of California, 10 days  
37 if the place of address is outside the State of California but within  
38 the United States, and 20 days if the place of address is outside the  
39 United States. If the notice is served by facsimile transmission,  
40 Express Mail, or another method of delivery providing for

1 overnight delivery, the initial period within which to file the  
2 petition shall be increased by two court days. The superior court  
3 may, for good cause, and prior to the expiration of the initial  
4 period, extend the time for one additional period not to exceed 10  
5 days.

6 (m) (1) If a motion for summary adjudication is granted, at the  
7 trial of the action, the cause or causes of action within the action,  
8 affirmative defense or defenses, claim for damages, or issue or  
9 issues of duty as to the motion which has been granted shall be  
10 deemed to be established and the action shall proceed as to the  
11 cause or causes of action, affirmative defense or defenses, claim  
12 for damages, or issue or issues of duty remaining.

13 (2) In the trial of the action, the fact that a motion for summary  
14 adjudication is granted as to one or more causes of action,  
15 affirmative defenses, claims for damages, or issues of duty within  
16 the action shall not operate to bar any cause of action, affirmative  
17 defense, claim for damages, or issue of duty as to which summary  
18 adjudication was either not sought or denied.

19 (3) In the trial of an action, neither a party, nor a witness, nor  
20 the court shall comment upon the grant or denial of a motion for  
21 summary adjudication to a jury.

22 (n) A cause of action has no merit if either of the following  
23 exists:

24 (1) One or more of the elements of the cause of action cannot  
25 be separately established, even if that element is separately  
26 pleaded.

27 (2) A defendant establishes an affirmative defense to that cause  
28 of action.

29 (o) For purposes of motions for summary judgment and  
30 summary adjudication:

31 (1) A plaintiff or cross-complainant has met his or her burden  
32 of showing that there is no defense to a cause of action if that party  
33 has proved each element of the cause of action entitling the party  
34 to judgment on that cause of action. Once the plaintiff or  
35 cross-complainant has met that burden, the burden shifts to the  
36 defendant or cross-defendant to show that a triable issue of one or  
37 more material facts exists as to that cause of action or a defense  
38 thereto. The defendant or cross-defendant may not rely upon the  
39 mere allegations or denials of its pleadings to show that a triable  
40 issue of material fact exists but, instead, shall set forth the specific

1 facts showing that a triable issue of material fact exists as to that  
2 cause of action or a defense thereto.

3 (2) A defendant or cross-defendant has met his or her burden  
4 of showing that a cause of action has no merit if that party has  
5 shown that one or more elements of the cause of action, even if not  
6 separately pleaded, cannot be established, or that there is a  
7 complete defense to that cause of action. Once the defendant or  
8 cross-defendant has met that burden, the burden shifts to the  
9 plaintiff or cross-complainant to show that a triable issue of one or  
10 more material facts exists as to that cause of action or a defense  
11 thereto. The plaintiff or cross-complainant may not rely upon the  
12 mere allegations or denials of its pleadings to show that a triable  
13 issue of material fact exists but, instead, shall set forth the specific  
14 facts showing that a triable issue of material fact exists as to that  
15 cause of action or a defense thereto.

16 (p) Nothing in this section shall be construed to extend the  
17 period for trial provided by Section 1170.5.

18 (q) Subdivisions (a) and (b) shall not apply to actions brought  
19 pursuant to Chapter 4 (commencing with Section 1159) of Title 3  
20 of Part 3.

21 (r) For the purposes of this section, a change in law shall not  
22 include a later enacted statute without retroactive application.

23 (s) (1) *Notwithstanding subdivision (f), a party may move for*  
24 *summary adjudication of a legal issue or a claim for damages*  
25 *other than punitive damages that does not completely dispose of*  
26 *a cause of action, an affirmative defense, or an issue of duty.*

27 (2) *This motion may only be brought upon the stipulation of the*  
28 *parties whose claims or defenses are put at issue by the motion that*  
29 *the determination of the motion will (A) further the interests of*  
30 *judicial economy, by reducing the time to be consumed in trial, or*  
31 *(B) significantly increase the ability of the parties to resolve the*  
32 *case by settlement.*

33 (3) *Any motion for summary adjudication brought under this*  
34 *subdivision shall contain the following language, or its substantial*  
35 *equivalent, in the notice of motion:*

36 *“This motion is made pursuant to subdivision (s) of Section*  
37 *437c of the Code of Civil Procedure. The parties to this motion*  
38 *stipulate that the court shall hear the motion and that the*  
39 *resolution of this motion will either further the interests of judicial*  
40 *economy by reducing the time to be consumed in trial or*

1 *significantly increase the ability of the parties to resolve the case*  
2 *by settlement.”*

3 *(4) The notice of motion shall be signed by counsel for all*  
4 *parties, and by those parties in propria persona, to the motion.*

5 *(5) A motion for summary adjudication brought pursuant to*  
6 *this subdivision may be made by itself or as an alternative to a*  
7 *motion for summary judgment and shall proceed in all procedural*  
8 *respects as a motion for summary judgment.*

